

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN DOES 1 THROUGH 7,

Judgment Creditors,

v.

THE TALIBAN, AL-QAEDA,
and THE HAQQANI NETWORK,

Judgment Debtors,

v.

THE BANK OF NEW YORK
MELLON,

Garnishee.

Case Action No. 6:22-cv-00990-DNH-TWD

SUPPLEMENTAL DECLARATION OF BRIAN FONSECA

I, Brian Fonseca, declare the following:

1. The ongoing Russo-Ukrainian conflict began in February 2014 immediately after the Ukrainian Revolution deposed Russian-backed President Viktor Yanukovych. In March 2014, Russia annexed Crimea¹ and provided support to proxies, the Donetsk and Luhansk People's Republics, that seized control of one third of Eastern Ukraine's territory.² What followed were years of tense relations between the Ukrainian government and Russian-supported separatists factions.³

¹ Jonathan Masters, *Ukraine: Conflict at the Crossroads of Europe and Russia*, COUNCIL ON FOREIGN RELATIONS, <https://www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia>.

² *Conflict in Ukraine's Donbas: A Visual Explainer*, INTERNATIONAL CRISIS GROUP, <https://www.crisisgroup.org/content/conflict-ukraines-donbas-visual-explainer>.

³ Joe Fernandez, *Luhansk and Donetsk are key to understanding the latest escalation in Ukraine*, NPR, <https://www.npr.org/2022/02/22/1082345068/why-luhansk-and-donetsk-are-key-to-understanding-the-latest-escalation-in-ukraine>.

2. On June 19, 2015, nineteen Ukrainian private entities “Privat Companies” sued the Russian Federation at the Permanent Court of Arbitration (“PCA”) based in The Hague for the losses resulting from the annexation of Crimea.⁴

3. Following a call from Russian President Vladimir Putin on or about March 7, 2017, Russian banks in Ukraine announced their decision to start servicing the bearers of passports issued by pseudo-authorities in the parts of Donetsk and Luhansk.⁵ This exacerbated the conflict between the Russian banks (namely Sberbank PJSC; VS Bank PJSC; Prominvestbank PJSC; VTB Bank PJSC; and BM Bank PJSC) and Ukrainian authorities and activists.⁶

4. As a result, on March 15, 2017, the National Security and Defense Council of Ukraine imposed a trade blockade on Russian-occupied territories in Eastern Ukraine.⁷ And on March 16, 2017, former President of Ukraine, Petro Poroschenko, signed a decree imposing sanctions on five banks operating in Ukraine with Russian capital: Sberbank PJSC; VS Bank PJSC; Prominvestbank PJSC; VTB Bank PJSC; and BM Bank PJSC.⁸

5. On May 2, 2018, the PCA issued a judgment in the case *Everest Estate LLC et al. v. The Russian Federation*, ruling that Russia was “responsible for violating the rights of Ukrainian

⁴ Yuri Zoria, *Hague court rules Russia must compensate Ukrainian investors \$159 mn for Crimea losses*, EUROMAIDAN PRESS, <https://euromaidanpress.com/2018/05/10/first-ever-ruling-of-hague-court-on-crimean-losses-russia-must-pay-ukrainian-companies-us159-mln/>; *Everest Estate LLC et al. v. The Russian Federation*, PCA-CPA, <https://pca-cpa.org/en/cases/133/>.

⁵ *Russia’s Sberbank says concerned by protests against Ukraine subsidiary*, REUTERS, <https://www.reuters.com/article/ukraine-crisis-sanctions-sberbank-rossii/russias-sberbank-says-concerned-by-protests-against-ukraine-subsidiary-idUSL5N1GQ5QI>.

⁶ Oksana Grytsenko, *Russia’s Sberbank ‘looking for quick exit from Ukraine’*, KYIV POST (Mar. 21, 2017, 7:02 PM), <https://www.kyivpost.com/ukraine-politics/russias-sberbank-looking-quick-exit-ukraine.html>.

⁷ Maria Romanenko, *Poroshenko sanctions 5 Russian banks*, KYIV POST, <https://www.kyivpost.com/business/poroshenko-imposes-sanctions-five-russian-banks.html>.

⁸ *Ukraine imposes sanctions on five Russian banks*, REFORLD, <https://www.refworld.org/docid/5975a662a.html>.

investors” and ordering it to “compensate 19 Ukrainian private entities...for the losses resulting from the annexation of Crimea back in March 2014.”⁹

6. On September 5, 2018, the Kyiv Court of Appeal issued a ruling to freeze the shares of Sberbank, Prominvestbank, and VTB bank following a request of the Privat Companies for the Ukrainian Court to recognize the PCA’s decision. The freeze prohibited any liquidation or reorganization of the banks by their parent companies.¹⁰

7. In May 2019, a decree was issued in Ukraine to seize the shares of Prominvestbank to Compensate the Privat Companies.¹¹

8. On June 20, 2019, VEB.RF filed a request for arbitration with the Stockholm Chamber of Commerce Arbitration Institute seeking to institute arbitral proceedings against Ukraine for expropriating the shares of Prominvestbank.¹²

⁹ Yuri Zoria, *Hague court rules Russia must compensate Ukrainian investors \$159 mn for Crimea losses*, EUROMAIDAN PRESS, <https://euromaidanpress.com/2018/05/10/first-ever-ruling-of-hague-court-on-crimean-losses-russia-must-pay-ukrainian-companies-us159-mln/>.

¹⁰Report: Ukrainian Court Freezes Shares of Russian Banks’ Local Units, S&P GLOBAL MARKET INTELLIGENCE, <https://www.spglobal.com/marketintelligence/en/news-insights/trending/dfld2ddk4fihfbfezvxnw2>; Appeal Court Freezes Shares Of Prominvestbank, Sberbank, VTB Bank, UKRAINIAN NEWS <https://ukranews.com/en/news/583346-appeal-court-freezes-shares-of-prominvestbank-sberbank-vtb-bank>.

¹¹ The Supreme Court lifted the ban on the compulsory sale of Prominvestbank, FINBALANCE, <https://finbalance.com.ua/en/news/the-supreme-court-lifted-the-ban-on-the-compulsory-sale-of-prominvestbank>.

¹² See VEB v. Ukraine, Partial Award on Preliminary Objections (Case No. V2019/088), JUS MUNDI, <https://jusmundi.com/en/document/decision/en-vnesheconombank-veb-v-ukraine-original-proceedings-wednesday-21st-august-2019> at par. 9.

9. On August 28, 2019, the Stockholm Chamber of Commerce Arbitration Institute issued a decision banning Ukraine from selling the expropriated shares of Prominvestbank.¹³ Ukraine failed to voluntarily comply with the emergency arbitration award.¹⁴

10. On September 2019, VEB.RF brought an application before the Kyiv Court of Appeal for the recognition and enforcement of the Stockholm Chamber of Commerce Arbitration Institute's award.¹⁵

11. Ukraine appealed the Stockholm Chamber of Commerce Arbitration Institute, requesting it set aside its August 2019 decision, but in February 2020, the Arbitration Institute dismissed the Appeal and again prohibited the sale of Prominvestbank's shares.¹⁶

12. In March 2020, in violation of the Stockholm Chamber of Commerce Arbitration Institute's decision, the Ministry of Justice of Ukraine sold Prominvestbank's shares on the PFTS stock exchange.¹⁷

¹³ *Stockholm Arbitration Court bars Ukraine from selling shares of VEB subsidiary*, KYIV POST, <https://www.kyivpost.com/business/stockholm-arbitration-court-bars-ukraine-from-selling-shares-of-veb-subsidiary.html>; *Stockholm Court Bans Ukraine from Selling Prominvestbank Shares*, REUTERS, <https://www.reuters.com/article/us-russia-ukraine-bank/stockholm-court-bans-ukraine-from-selling-prominvestbank-shares-idUSKCN1VI1OL>.

¹⁴ *Vnesheconombank v. Ukraine - Decision of Supreme Court of Ukraine*, ITALAW, <https://www.italaw.com/sites/default/files/case-documents/italaw12015.pdf>.

¹⁵ *Id.*

¹⁶ *Confiscation of Prominvestbank: An Oversight That May Cost Ukraine Dearly*, SEEKINGALPHA, <https://seekingalpha.com/instablog/48913427-user-48913427/5418791-confiscation-of-prominvestbank-oversight-may-cost-ukraine-dearly>; see also *supra* note 12.

¹⁷ *Confiscation of Prominvestbank: An Oversight That May Cost Ukraine Dearly*, SEEKINGALPHA, <https://seekingalpha.com/instablog/48913427-user-48913427/5418791-confiscation-of-prominvestbank-oversight-may-cost-ukraine-dearly>; Beata Fojcik, *Ukraine's Competition Watchdog Approves Sale of Prominvestbank to Local Banker*, S&P GLOBAL MARKET INTELLIGENCE, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/ukraine-s-competition-watchdog-approves-sale-of-prominvestbank-to-local-banker-60693216>.

13. On April 10, 2020, the Stockholm Chamber of Commerce Arbitration Institute issued a separate award ordering Ukraine to pay VEB.RF the legal expenses incurred in connection with the emergency arbitration proceedings.¹⁸

14. On September 7, 2020, the Kyiv Court of Appeal issued its opinion, rejecting VEB.RF's request for the recognition and enforcement of the award of the Emergency Arbitrator of the Arbitration Institute of the Stockholm Chamber of Commerce of 28 August 2019 concerning the claim of VEB.RF against the state of Ukraine.¹⁹

15. On October 8, 2020, the Antimonopoly Committee of Ukraine ("AMC"), which is a specialized government body that focuses on preventing anti-competitive activities in the Ukraine and is under the control of the President of Ukraine, approved the acquisition of Prominvestbank by the Cypriot company Luregio Limited, the ultimate beneficiary of which is Ukrainian businessman Sergiy Tigipko, through the purchase of Financial Company Fortify LLC, again in violation of the Stockholm Chamber of Commerce arbitration decision.²⁰

16. On October 12, 2020, the National Bank of Ukraine ("NBU") received documents from Serhiy Tigipko to approve the acquisition of Prominvestbank.²¹

17. Due to Ukraine's refusal to recognize the Stockholm Chamber of Commerce arbitration decision and award, VEB.RF requested that the Eastern Caribbean Supreme Court of the Virgin Islands recognize and enforce the award. On October 15, 2020, the Eastern Caribbean Supreme

¹⁸ See *supra* note 12, at par. 28(ii).

¹⁹ *Vnesheconombank v. Ukraine - Resolution of Kyiv Court of Appeal*, ITALAW, <https://www.italaw.com/sites/default/files/case-documents/italaw16211.pdf>.

²⁰ *NBU Receives Documents from Tigipko to Approve Purchase of PIB*, KYIV POST, <https://www.kyivpost.com/ukraine-politics/nbu-receives-documents-from-tigipko-to-approve-purchase-of-pib.html>.

²¹ *Id.*

Court of the Virgin Islands recognize the awards and on December 10, 2020, issued a charging order over the shares of Ukraine's shipping company: Fishing Company S.A.²²

18. On October 27, 2020, VEB.RF brought an appeal before the Supreme Court of Ukraine requesting that the Court quash the Kyiv Court of Appeal September 2020 judgment and render a new judgment granting VEB.RF's application.²³

19. In January 2021, the Supreme Court of Ukraine partially reversed the Court of Appeal's judgment and lifted the seizure of Prominvestbank shares.²⁴

20. On February 5, 2021, the NBU denied the sale of Prominvestbank to Sergiy Tigipko.²⁵

21. Prominvestbank shares reverted to VEB.RF and as of January 1, 2022, the NBU recognized VEB.RF as the 99.77% shareholder of the bank.²⁶

22. Concerning the current Ukrainian attempts to expropriate Russian banks within its territory, Russia has already indicated that it intends to challenge it in international tribunals as it has done so in the past. In fact, Russian-owned Sberbank, a bank like Prominvestbank, has already initiated arbitration proceedings against Ukraine. However, “[a]ccording to a copy of the Russian-Ukraine treaty..., the two countries have six months to attempt to resolve a dispute by negotiation before it can be submitted to arbitration.”²⁷

²² *BVI Court Charged Shares Owned By Ukraine in Satisfaction of VEB.RF's Claims*, VEB.RF, <https://xn--90ab5f.xn--p1ai/en/press-center/46811/>.

²³ See *supra* note 14.

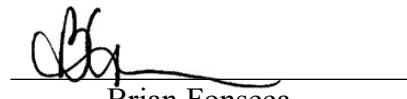
²⁴ *Id.*; *Supreme Court Lifts Seizures of PIB Shares, Unblocks Its Funds*, INTERFAX-UKRAINE, <https://interfax.com.ua/news/economic/721282.html>.

²⁵ See *supra* note 20.

²⁶ *Data on final key participants in the bank ownership structure as of January 01, 2022*, NATIONAL BANK OF UKRAINE, https://bank.gov.ua/files/Shareholders/300012/300012_20220101.pdf [Translation attached to Appendix].

²⁷ *Russia's Sberbank to Appeal Against Ukraine's Move to Seize Its Assets*, REUTERS, <https://www.reuters.com/legal/transactional/russias-sberbank-appeal-against-ukraines-move-seize-its-assets-2022-05-12/>; Caroline Simson, *Russia Pushes Back on Ukraine's Move To Seize Its Assets*, LAW360, <https://www.law360.com/articles/1492739/russia-pushes-back-on-ukraine-s-move-to-seize-its-assets>.

I declare and state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct pursuant to 28 U.S.C. § 1746.



Brian Fonseca